

**BY-LAWS OF
THE TOWN OF WALLKILL INDUSTRIAL DEVELOPMENT AGENCY**

Article 100 – THE AGENCY

101. NAME. The name of the Agency shall be “Town of Wallkill Industrial Development Agency” hereinafter referred to as the Agency.

102. SEAL OF AGENCY. The seal of the Agency shall be in the form of a circle and shall bear the name of the Agency and the year of its organization. The use of the Agency seal shall not be required for the validity of any action of the Agency. A facsimile seal or use of the word seal may also be used if deemed appropriate.

103. OFFICE OF THE AGENCY. The office of the Agency shall be at 99 Tower Drive, Building A, Middletown, New York 10941 or such other location within the County of Orange as the Agency may from time to time designate by resolution.

Article 200 – MEMBERS

201. AUTHORITY AND RESPONSIBILITIES. The Members of the Board of the Agency shall:

- (a) execute direct oversight over the Agency’s Chief Executive Officer, Chief Financial Officer, Chief Operating Officer and Executive Director, to the extent that such positions exist, (“Management”) in the effective and ethical management of the Agency;
- (b) understand, review and monitor the implementation of fundamental financial and management controls and operation decisions of the Agency;
- (c) establish policies regarding the payment of salary, compensation and reimbursements to, and establish rules for the time and attendance of, the Management, if applicable;
- (d) adopt a code of ethics applicable to each officer, board member and employee that, at a minimum, includes the standards established in Section 74 of the Public Officers Law;
- (e) establish written policies and procedures on personnel including policies protecting employees from retaliation for disclosing information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member of the Agency, investments, travel, the acquisition of real property and the disposition of real and personal property and the procurement of goods and services; and

(f) adopt a defense and indemnification policy and disclose such policy to any and all prospective board members.

202. TRAINING. Board members appointed to the Agency on or after December 31, 2014, 2006 must participate in New York State approved training regarding their legal, fiduciary, financial and ethical responsibilities as board members of the Agency within one (1) year of appointment to the board of the Agency and shall participate in such continuing training as may be required to remain informed of best practices, and regulatory and statutory changes relating to effective oversight of management and financial activities of the Agency.

203. SEPARATION OF BOARD AND MANAGEMENT. No Board member shall serve as the Agency's Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive Director, comptroller or hold any other equivalent position while also serving as a member of the Board.

204. EXTENSION OF CREDIT. The Board is prohibited from extending or maintaining credit, arranging for the extension of credit, or renewing an extension of credit, in the form of a personal loan to or for any member, officer or employee of the Agency.

205. INDEPENDENCE. Except for board members who serve as members by virtue of holding a civil office of the state, the majority of the remaining members who are appointed to the board on or after January 13, 2006 must be independent. An independent member is one who:

- (a) is not, and in the past two years has not been, employed by the Agency or an affiliate in an executive capacity;
- (b) is not, and in the past two years has not been, employed by an entity that received remuneration valued at more than \$15,000 for goods and services provided to the public authority or received any other form of financial assistance valued at more than \$15,000 from the Agency;
- (c) is not a relative of an employee of the Agency; and
- (d) is not, and in the past two years has not been, a lobbyist registered under a state or local law and paid by a client to influence the management decisions, contract awards, rate determinations or any other similar actions of the public authority or an affiliate.

206. RESIGNATION OF MEMBERS. Any member of the Board may resign from the Board of Directors. Resignation must be by letter directed to the Chairman. A member of the Board may be removed by a majority vote of the Board for serious inefficiency or neglect of duty or for

misconduct in office, after a hearing before the Board where the member has been given an opportunity to respond to the allegation. A record of the proceedings shall be kept by the Board. Failure of a Board member to attend three (3) regular meetings of the Board without good cause shall be cause for removal.

Article 300 — OFFICERS

301. OFFICERS. The officers of the Agency shall be a Chairman (who shall also be the Chief Executive Officer), one or more Vice Chairmen, a Secretary, and a Treasurer. There may be an Assistant Secretary and an Assistant Treasurer. Each of the foregoing offices shall be held by a member of the board of the Agency and except for the offices of Chairman and Vice Chairman; one person may hold more than one office. Officers authorized to sign orders and checks shall give such bond for the faithful performance of the duties of such office as the Agency may determine.

302. CHAIRMAN. The Chairman shall preside at all meetings of the Agency. Except as otherwise authorized by resolution of the Agency, the Chairman shall sign all agreements, contracts, deeds, bonds, mortgages, and other instruments of indebtedness, and any other instrument of indebtedness. At each meeting the Chairman shall submit such recommendations and information as the Chairman may consider proper concerning the business, affairs and policies of the Agency.

303. VICE CHAIRMAN. A Vice Chairman shall perform the duties of the Chairman in the absence or incapacity of the Chairman; in case of the resignation or death of the Chairman, a Vice Chairman shall perform such duties as are imposed on the Chairman until such time as the Agency shall appoint a successor Chairman.

304. SECRETARY. The Secretary shall keep the records of the Agency, shall act as Secretary of the meetings of the Agency and record all votes and shall keep a record of the proceedings of the Agency in a journal of proceedings to be kept for such purpose and shall perform all duties incident to the office. The Secretary shall keep in safe custody the seal of the Agency and shall have power to affix such seal to all contracts and other instruments authorized to be executed by the Agency. In the absence of the secretary or in the event of the secretary's inability or refusal to act, the Chairman and/or vice chairman may perform the duties and exercise the powers of the

secretary and shall perform such other duties and have such other powers as the Board of Commissioners may from time to time prescribe.

305. ASSISTANT SECRETARY. The Assistant Secretary shall perform the duties of the Secretary in the absence or incapacity of the Secretary; in case of the resignation or death of the Secretary the Assistant Secretary shall perform such duties as are imposed on the Secretary until such time as the Agency shall appoint a successor Secretary.

306. TREASURER. The Treasurer shall have the care and custody of all funds of the Agency and shall deposit the same in the name of the Agency in such bank or banks as the Agency may select. Unless otherwise provided by resolution, the Treasurer shall sign all orders and all checks for the payment of money; and shall pay out and disburse such moneys under the direction of Agency. If authorized, by resolution, the Chairman and, in the event of the absence or incapacity of the Chairman, a Vice Chairman, shall sign all orders and checks prepared by the Treasurer. The Treasurer shall keep regular books of account showing receipts and expenditures, and shall render to the Agency at regular intervals an account of all transactions and also of the financial condition of the Agency. In the absence of the treasurer or in the event of his or her inability or refusal to act, the Chairman and/or vice chairman may perform the duties and exercise the powers of the treasurer and shall perform such other duties and have such other powers as the Board of Commissioners may from time to time prescribe.

307. ASSISTANT TREASURER. The Assistant Treasurer shall perform the duties of the Treasurer in the absence or incapacity of the Treasurer; in case of the resignation or death of the Treasurer, the Assistant Treasurer shall perform such duties as are imposed on the Treasurer until such time as the Agency shall appoint a successor Treasurer.

308. ADDITIONAL DUTIES. The officers of the Agency shall perform such other duties and functions as may from time to time be required by the Agency by the By-Laws of the Agency, or by the rules and regulations of the Agency.

309. APPOINTMENT OF OFFICERS. All officers of the Agency except the first Chairman shall be appointed at the annual meeting of the Agency from among the members of the Agency, and shall hold office for one year or until their successors are appointed.

310. VACANCIES. In the event that any office shall become vacant, the Agency shall appoint a successor from among its membership at the next regular meeting, and such appointment shall be for the unexpired term of said office.

311. CHIEF EXECUTIVE OFFICER. The Chief Executive Officer shall be charged with the management of all projects of the Agency.

312. CHIEF FINANCIAL OFFICER. The Chief Financial Officer shall be appointed by the Agency, and shall be charged with the management of the Agency's financial business and activities, subject to the direction of the Chief Executive Officer and the Board. The Chief Financial Officer shall not be a member of the Board of the Agency.

313. CHIEF OPERATING OFFICER. The Chief Operating Officer shall be appointed by the Agency, and shall be charged with the management of the Agency's day to day business activities, subject to the direction of the Chief Executive Officer and the Board. The Chief Operating Officer shall not be a member of the Board of the Agency.

314. EXECUTIVE DIRECTOR. The Executive Director shall be appointed by the Agency, and shall have general supervision over the administration of the business and affairs of the Agency, subject to the direction of the Chief Executive Officer and the Board.

315. ADDITIONAL PERSONNEL. The Agency may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions as prescribed by the New York State Industrial Development Act, as amended, and all other laws of the State of New York applicable thereto. The selection and compensation of all personnel shall be determined by the Agency subject to the laws of the State of New York.

Article 400 – INDEMNIFICATION

401. INDEMNIFICATION. The New York State Legislature has enacted legislation permitting public entities, including industrial development agencies, to provide for the defense and indemnification of officers and employees of those agencies. This Article 400 implements that concept and the statutory intent set forth in Article 2, Section 18 of the Public officers Law of the State of New York.

402. DEFINITION OF EMPLOYEE. The term "employee" shall mean any commissioner, member of a public board or commission, trustee, director, officer, employee, volunteer expressly authorized to participate in a publicly sponsored volunteer program, or any other person holding a position by election, appointment or employment in the service of the Agency whether or not compensated. The term "employee" shall include a former employee, his estate or judicially appointed personal representative.

403. DEFENSE.

(a) Upon compliance by the employee with the provisions of Section 405 hereof, the Agency shall provide for the defense and indemnification of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting during the course of his employment and within the scope of his public employment or duties. This duty to provide for a defense and indemnification shall not arise where such civil action or proceeding is brought by, or at the behest of the Agency;

(b) Subject to the conditions set forth in this Article 400, the employee shall be represented by Counsel to the Agency or an attorney employed or retained by the Agency for the defense of the employee. The Agency shall employ or retain an attorney for the defense of the employee whenever (1) the Agency does not have Agency Counsel, (2) the Agency determines, based upon its investigation and review of the facts and circumstances of the case, that representation by the Agency Counsel would be inappropriate, or (3) a court of competent jurisdiction determines that a conflict of interest exists and that the employee cannot be represented by Agency Counsel. Reasonable attorneys' fees and litigation expenses shall be paid by the Agency to such attorney employed or retained, from time to time, during pendency of the civil action or proceeding, subject to certification by the Chairman that the employee is entitled to representation under the terms and conditions hereof. Payment of such fees and expenses shall be made in the same manner as payment of other claims and expenses of the Agency. Any dispute with respect to representation of multiple employees by Agency Counsel or by an attorney employed or retained for such purposes, or with respect to the amount of the fees or expenses shall be resolved by the court upon motion or by way of a special proceeding; and

(c) Where the employee delivers process and a written request for a defense to the Agency, under Section 405 hereof, the Agency, shall take the necessary steps on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

404. DEFENSE AND INDEMNIFICATION.

(a) The Agency, shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting during the course of his employment and within the scope of his public employment or duties; provided further that in the case of a settlement, the

duty to indemnify and save harmless shall be conditioned upon the approval of the amount of settlement by the members of the Board of the Agency, or its insurance company. This obligation by the Agency to indemnify shall not apply to any claims against officers and employees of the Agency, currently outstanding, or reduced to judgment, or settlement;

(b) Except as otherwise provided by law, this duty to indemnify and save harmless prescribed by this section shall not arise where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee;

(c) Nothing in this section shall authorize the Agency to defend, indemnify or save harmless an employee with respect to any claims filed, or money recovered from an employee pursuant to Section 51 of the General Municipal Law or for any claims alleging intentional wrongdoing or a reckless act; and

(d) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall serve a copy of such judgment or settlement, personally or by certified or registered mail within five (5) days of the date of entry or settlement, upon the Chairman of the Agency and Agency Counsel, and if not inconsistent with the provisions of this resolution, the amount of such judgment or settlement shall be paid by the Agency.

405. DUTY TO NOTIFY. The duty to defend or indemnify and save harmless prescribed herein shall be conditioned upon:

(a) Delivery by the employee to Agency Counsel and to the Chairman of the Agency a written request to provide for his defense, together with the original or a copy of any summons, complaint, process, notice, demand or pleading within five (5) days after he is served with such document, and

(b) The full cooperation of this employee in the defense of such action or proceeding and in defense of any action or proceeding against the Agency based upon the same act or omission, and in the prosecution of any appeal.

406. OTHER RIGHTS. The benefits conferred in this Article 400 shall inure only to employees as deemed herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this Article 400 be construed to affect, alter or repeal any provision of the Worker's Compensation Law.

407. NOTICE. This Article 400 shall not in any way affect the obligation of any claimant to give notice to the Agency under Section Ten of the Court of Claims Act, Section 50 (e) of the General Municipal Law, or any other provisions of law.

408. INSURANCE. The Agency is hereby authorized and empowered to purchase insurance from any insurance company created by, or under, the laws of the State of New York, or authorized by law to transact business in this state, against any liability imposed by the provisions of this Article 400 or to act as a self-insurer with respect thereto.

409. PAYMENTS. All payments made under the terms of this Article 400, whether for insurance or otherwise, shall be deemed to be for a public purpose and shall be audited and paid in the same manner as other public charges.

410. INSURER RIGHTS. The provisions of this Article 400 shall not, be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

411. IMMUNITY. Except as otherwise specifically provided in this Article 400, the provisions of this Article 400 shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity to liability available to, or conferred upon, any unit, entity officer or employee of the Agency, by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

412. OTHER ENACTMENTS. Except as otherwise provided in this Article 400, benefits accorded to employees under this Article 400 shall supplement, and be available in addition to, defense or indemnification protection conferred by any other enactment of the Agency, or common law. Notwithstanding anything contained herein to the contrary, the Agency shall be entitled to contribution and/or indemnification by the employee and/or other agency in the event that such other agency is also obligated to provide a defense for the employee and/or pay any sums of monies by way of indemnification and/or judgment or award.

413. APPLICABILITY. The provisions of this Article 400 shall apply to all actions or proceedings specified herein which have been commenced, instituted or brought on or after the adoption of these By-laws.

414. NO DUTY TO DEFEND AND/OR INDEMNIFY.

(a) Notwithstanding anything to the contrary contained herein there shall be no duty of the Agency to defend or indemnify any employee unless the members of the Board finds (1) that the claim arose during the course of his normal employment and within the scope of his employment in a matter in which the Agency had an interest; (2) the employee was acting in discharge of a duty imposed or authorized by law, and (3) the employee acted in good faith and without malice.

(b) In the event the Agency assumes the duty of defense and in the event a court determines that the employee acted in bad faith or with malice or in a wanton or willful manner so as to cause the claim, or was not acting in a bona fide discharge of his or her municipal duties, the employee shall reimburse the Agency for all expenses incurred for defense of claims arising out of the alleged civil action or civil proceeding. Upon such finding by a court, the Agency shall have no duty to satisfy any judgment or claim against the employee, and in the event the Agency has satisfied or is ordered to satisfy said judgment or claim, the employee must reimburse the Agency for any sum paid for the said satisfaction.

415. SEVERABILITY. If any provisions of this Article 400 or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this Article 400, or the application of any such provision to any other person or circumstance.

Article 500 – MEETINGS

501. ANNUAL MEETINGS. The annual meeting of the Agency shall be held in the month of February of each year at the Wallkill Town Hall, 99 Tower Drive, Middletown, New York 10941 or at a meeting place designated by the Agency. If the Agency shall fail to hold an annual meeting in any year the officers shall continue in office until their successors shall be chosen and all proceedings of the Agency shall be regular and valid.

502. REGULAR MEETINGS. Regular meetings of the Agency may be held with such notice as required by law at such times and places as from time to time may be determined by resolution of the Agency.

503. SPECIAL MEETINGS. The Chairman of the Agency may, when the Chairman deems it desirable, and shall, upon the written request of two members of the Agency, call a special meeting of the Agency for the purpose of transacting any business designated in the call. The call for a special meeting may be delivered to each member of the Agency or may be mailed to the business or home address of each member of the Agency on such notice as required by law. E-mail notice of meetings shall be sufficient provided that the Chairman has been provided with the most recent e-mail address of each member. Waivers of notice may be signed by any members failing to receive a proper notice. At such special meeting no business shall be considered other than as designated in the call, but if all the members of the Agency are present at a special meeting, with or without notice thereof, any and all business may be transacted at such special meeting.

504. QUORUM. At all meetings of the Agency, a majority of the members of the Agency shall constitute a quorum for the purpose of transacting business. A number smaller than a quorum may meet and adjourn to some other time or until the quorum is obtained.

505. ORDER OF BUSINESS. At the regular meetings of the Agency the following shall be the order of business.

- (a) Roll call.
- (b) Reading and approval of the minutes of the previous meeting.
- (c) Bills and communications.
- (d) Reports of the Treasurer.
- (e) Report of the Committees or Administrative Director and staff.
- (f) Old business.
- (g) New business.
- (h) Adjournment.

All resolutions shall be reduced to written form and incorporated in the minutes of the meetings of the Agency.

The voting on all questions coming before the Agency may be by show of hands or calling for the ayes and nays unless a member shall request a roll call vote. In any event, the ayes and nays shall be recorded in the minutes of such meeting. Appointments may be voted upon by ballot.

Article 600 – AMENDMENTS AND REPEAL

601. AMENDMENTS TO BY-LAWS. The By-Laws of the Agency shall be amended only with the approval of at least a majority of all the members of the Agency at a regular or special meeting, but no such amendment shall be adopted unless at least seven (7) days written notice thereof has been previously given to all members of the Agency. The notice by this section cannot be waived.

602. EFFECT OF AMENDMENTS. The By-Laws heretofore in effect are hereby repealed and these By-Laws are intended to replace in their entirety such By-Laws as were heretofore in effect. Nothing contained herein is intended to affect the validity of any action taken by the Agency pursuant to By-Laws heretofore in effect.

Approved and adopted as of December 31, 2018